

R E M A R K S

Prior to entry of this Amendment:

- Claims 1-33 were pending in the present application
- Claims 1-33 stand rejected

Upon entry of this Amendment, which is respectfully requested for the reasons set forth below:

- Claims 2-14, 26-29, and 34-51 will be pending
- Claim 26 will be amended
- Claims 34-51 will be added
- Claims 1-2, 15-25, and 30-33 will be cancelled without prejudice
- Claims 3, 26, 28, 34, 36, 38, 39, and 51 will be the only independent claims

Interview

Applicants would like to thank Supervisory Patent Examiner (SPE) John Weiss and Examiner Borissov for the helpful Interview held on March 31, 2003, with Applicants' representative. The Examiners and Applicants' representative discussed the present application in light of Reber and Brown.

Applicants' representative and SPE Weiss agreed during the Interview that Claims 1-14 and 33 should be permitted under 35 U.S.C. 101 as being related to statutory subject matter. Examiner Borissov agreed to reconsider the Section 101 rejection of Claims 1-14 and 33.

Applicants' representative suggested that neither Reber nor Brown teaches or suggests *containers for storing medicine that are able to communicate with one another*, as generally provided for in independent Claim 3. Examiner Borissov disagreed, stating that communication between medicine containers is "inherently presented" in Reber.

Applicants are grateful for the opportunity to discuss the present application with SPE Weiss and Examiner Borissov.

"Essential Structural Element" in Method Claims

During a Telephone Conversation held with SPE Weiss April 7, 2003, SPE Weiss suggested that there may be an "essential elements" problem with one or more claims in light of Section 112, second paragraph.

As best understood by Applicants, SPE Weiss suggested that Section 112, second paragraph, requires that a method claim must recite a method step of "providing" a structural component if that structural component is referred to in another method step. For example, in order to comply with Section 112, second paragraph, an exemplary independent method claim reciting a step of "determining whether a first apparatus is in communication with a second apparatus" must be amended to include a new step of "providing the first apparatus and the second apparatus" (emphasis added).

If this understanding is correct, Applicants respectfully traverse SPE Weiss's suggestion. Although Applicants are aware that a claim may be rejected under Section 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, Applicants are not aware of any statutory basis for requiring that a method claim recite "providing" of a structural component referred to in the steps of the method. Applicants respectfully request an explanation of the statutory basis and the rationale for requiring a "providing" of a structural component as an "essential element." Further, Applicants respectfully submit that the scope of the subject matter embraced by the pending Claims 2-14, 26-29, and 34-51 is clear, that Applicants have not otherwise indicated that the invention is to be of a scope different from that defined in the claims, and that the pending claims comply with all of the paragraphs of Section 112.

Claim Amendments

1. **Claim 26 has been amended to correct a minor typographical errors**

No new matter has been added, and no amendment was made for reasons relating to patentability.

2. **Claims 1-2, 15-25, and 30-33 have been cancelled without prejudice**

Claims 1-2, 15-25, and 30-33 have been cancelled without prejudice by this Amendment. Applicants intend to pursue the subject matter of Claims 1-2, 15-25, and 30-33 in a continuing application.

Section 101 Rejection

Claims 1-2, 3-14 and 33 stand rejected as being non-statutory. As discussed with SPE Weiss and Examiner Borissov during the Interview, Applicants respectfully traverse the Examiner's Section 101 rejection. Claims 1-2 and 33 have been cancelled without prejudice. Accordingly the Section 101 of Claims 1-2 and 33 is moot.

The Examiner states: "The claimed steps...are abstract ideas which can be performed mentally without interaction of a physical structure or are mere data storage devices that do not implement a useful, concrete and tangible result of a machine." [Office Action, page 2 (emphasis added)].

If Applicants have misunderstood the basis for rejection under 35 U.S.C. § 101, Applicants respectfully request clarification.

To the extent Applicants' understanding is correct, Applicants respectfully submit that a claimed invention is statutory if it produces a useful, concrete, and tangible result. State Street Bank v. Signature Financial Trust, 149 F.3d 1368, 47 USPQ2d 1596 (Fed. Cir. 1998), cert. denied, 119 S. Ct. 851 (1999); AT & T Corp. v. Excel Communications Inc., 172 F.3d 1352, 50 USPQ2d 1447 (Fed. Cir. 1999). Neither State Street Bank nor AT & T, nor any other relevant case or rule, imposes a requirement of "interaction of a physical structure" or "result of a

machine” set forth by the Examiner. In fact, both State Street Bank and AT & T completely lack any reference to either of these ‘requirements’ - only a useful, concrete, and tangible result is required under these cases.

Further, Applicants note that the embodiments of the claims do produce a useful, concrete, and tangible result, and the present application clearly explains the benefits of the claimed embodiments. For example, independent Claim 3 generally recites determining whether a first container for storing a first medicine was positioned so as to wirelessly communicate with a second container for storing a second medicine based at least in part on a received signal. An insurance company, for example, may monitor a party’s compliance to a medicine schedule by monitoring whether two or more medicine containers were able to communicate during a pre-determined time period. See, e.g., Specification, page 11, line 31 to page 12, line 2.

Accordingly, Applicants respectfully request the withdrawal of the Section 101 rejection of pending Claims **3-14**.

Section 102(e) Rejection

Claims 15 and 17 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,950,632 issued to Reber et al. (“Reber”). Applicants respectfully traverse the Examiner’s Section 102(e) rejection. However, Claims 15 and 17 have been cancelled without prejudice. Accordingly the Section 102(e) rejection of Claims 15 and 17 is moot.

Section 103(a) Rejection

Claims 1-2, 18-19, 21-23 and 30-33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Reber in view of U.S. Patent No. 6,151,586 issued to Brown et al. (“Brown”). Applicants respectfully traverse the Examiner’s Section 103(a) rejection of Claims 1-2, 18-19, 21-23, and 30-33.

Claim 20 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Reber and Brown in view of U.S. Patent No. 5,722,418 issued to Bro (“Bro”). Applicants respectfully traverse the Examiner’s Section 103(a) rejection of Claim 20.

Claims **3-14**, 16, and **26-27** stand rejected under 35 U.S.C. 103(a) as being unpatentable over Reber in view of U.S. Patent No. 5,757,271 issued to Andrews (“Andrews”). Applicants respectfully traverse the Examiner’s Section 103(a) rejection of Claims **3-14**, 16, and **26-27**.

Claims 24 and 25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Reber in view of U.S. Patent No. 6,375,038 issued to Daansen et al. (“Daansen”). Applicants respectfully traverse the Examiner’s Section 103(a) rejection of Claims 24 and 25.

Claims **28 and 29** stand rejected under 35 U.S.C. 103(a) as being unpatentable over Reber and Andrews in view of Brown. Applicants respectfully traverse the Examiner’s Section 103(a) rejection of Claims **28 and 29**.

Claims 1-2, 16, 18-25, and 30-33 have been cancelled without prejudice. Accordingly, the Section 103(a) rejection of Claims 1-2, 16, 18-25, and 30-33 is moot.

The Section 103(a) rejections of Claims 3-14 and 26-29 are discussed below.

1. **Independent Claims 3, 26, and 28**

Applicants respectfully submit that independent Claims 3, 26, and 28 are not obvious in light of Reber, Andrews or Brown, either alone or in combination. First, neither Reber, Andrews, nor Brown teaches or suggests all of the features of any of independent Claims 3, 26, and 28.

Second, there is no suggestion or motivation, either in the cited references or in the knowledge generally available to one of ordinary skill in the art, to modify or to combine the cited references to provide for all of the claimed features of each of independent Claims 3, 26, and 28.

1.1. **The References Do Not Disclose Communication Between Medicine Containers**

With respect to independent Claims 3, 26, and 28, as best understood by Applicants, the Examiner asserts that Reber discloses all of:

- (a) determining whether a first container for storing a first medicine was positioned so as to communicate with a second container for storing a second medicine
- (b) a device that monitors whether a first container for storing a first medicine was positioned so as to communicate with a second container for storing a second medicine
- (c) receiving a signal from a device such as in (b)

(Office Action, page 6.) Applicants respectfully traverse these assertions. Applicants have carefully reviewed the Reber, Brown, and Andrews references, including the passages cited by the Examiner, without finding a teaching or suggestion of any of the above features. For example, as discussed during the Interview, Applicants respectfully submit that neither Reber, Brown, nor Andrews teaches or suggests a container for storing a medicine that is even able to communicate with another container for storing a medicine. None of the cited references explicitly discloses or suggests either: (i) the ability of the “medicine container” described in Reber to communicate with another “medicine container,” or (ii) the desirability of such a feature.

1.1.1. **Communication between medicine containers is not “inherently presented” in Reber**

During the Interview, however, Examiner Borissov asserted that communication between medicine containers is “inherently presented” in Reber. Applicants respectfully traverse this assertion.

Under the doctrine of inherency, if an element is not expressly disclosed in a prior art reference, the reference will still be deemed to anticipate a subsequent claim if the missing element “is necessarily present in the thing described in the reference, and that it would be so

recognized by persons of ordinary skill.” Cont’l Can Co. v. Monsanto Co., 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). Thus, inherent anticipation requires that the missing descriptive material is necessarily present, not merely probably or possibly present, in the prior art. Trintec Indus., Inc. v. Top-U.S.A. Corp., 295 F.3d 1292, 1295, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002). Thus, the question is whether one skilled in the art would read Reber as inherently disclosing a medicine container able to communicate with another medicine container; that is, **whether one skilled in the art would read the “medicine container” of Reber as necessarily, not probably or possibly, presenting a container for storing medicine able to communicate with another such container.**

Applicants respectfully submit that such a finding cannot be supported by the record. Reber describes a system in which each described “medicine container” may be in communication with the described “medical communication apparatus” via a transmitter and/or receiver. Applicants, however, cannot identify evidence in the record to support a finding that one skilled in the art would read Reber as showing a “medicine container” that is **necessarily** able to communicate with another “medicine container.” For example, there is nothing in Reber, or otherwise in the record, to support the Examiner’s implied assertion that the described transmitter and/or receiver of a described “medicine container” **must be** operable to communicate with another such “medicine container.” Accordingly, Applicants respectfully submit that a medicine container able to communicate with another medicine container is not “inherently presented” in Reber.

Brown does not suggest communication with a medicine container; the Examiner does not assert otherwise. Andrews does not even teach or suggest a container for storing medicine; the Examiner does not assert otherwise. As neither Reber, Brown, nor Andrews, alone or in combination, suggests a medicine container that is able to communicate with another medicine container, Applicants respectfully submit that the references cannot suggest a feature of *determining whether a first medicine container is positioned so as to communicate with a second medicine container*, as generally recited in independent Claims 3, 26, and 28.

1.2. The References Do Not Disclose Determining Whether Two Containers are Positioned So As To Communicate

Even if communication between containers for storing medicine is “inherently presented” in Reber, which Applicants dispute, there is no teaching or suggestion in the references of *determining whether a first medicine container is positioned so as to communicate with a second medicine container* (as generally recited in each of independent Claims 3 and 26, and 28), nor is there any suggestion in the record of the desirability of such a feature. Applicants respectfully submit that the cited references also do not teach or suggest *a device that monitors whether a first container and a second container are positioned so as to communicate* (as generally recited in Claims 4 and 28), much less *receiving a signal from such a device* (as generally recited in Claims 4 and 28). For example, the “medical communication apparatus” of the Reber system does not teach or suggest an apparatus for storing medicine, nor does it teach or suggest *a device that monitors whether a first container and a second container are positioned so as to communicate*.

Independent Claim 28 also recites *a compliance monitoring device adapted to determine, based on at least a communication with a first container adapted to store a first medicine, whether the first container is positioned so as to communicate with a second container that is adapted to store a second medicine and to communicate with the first container*. Contrary to the Examiner's assertion, Reber does not teach or suggest *a medicine container adapted to communicate with another medicine container, much less a compliance monitoring device adapted to determine whether a first medicine container is positioned so as to communicate with a second container, much less a compliance monitoring device adapted to generate data based at least in part on whether a first container is positioned so as to communicate with a second container*, as recited in independent Claim 28.

The Examiner asserts that Brown teaches a server for receiving compliance data and rewarding at least one party based on the data. However, there is nothing in the cited references alone or in combination, that teaches or suggests *rewarding at least one party based on data that is generated based at least in part on whether a first container is positioned so as to communicate with a second container*, as provided for in Claim 28.

Accordingly, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness with respect to independent Claims 3, 26, and 28. Claims 4-14, 27 and 29 depend from independent Claims 3, 26, and 28, respectively, and are believed to contain allowable subject matter for at least the reasons stated herein with respect to those independent claims.

1.3. No Motivation to Combine the Cited References

As best understood by Applicants, the Examiner also asserts the following to be true with respect to independent Claims 3, 26, and 28:

- (a) It would have been obvious to one of ordinary skill in the art to modify Reber in light of Andrews to provide for a feature of *a first medicine container positioned so as to wirelessly communicate with a second container for storing a second medicine*
- (b) The motivations for (a) would be (i) to “enhance the security of the system” and (ii) “increase accuracy of determining compliance of the patients with the prescribed schedule of taking medicine”
- (c) It would have been obvious to one of ordinary skill in the art to modify the proposed combination of Reber and Andrews in light of Brown to provide for a feature of *a server adapted to receive data output by a compliance monitoring device and reward at least one party based on the received data*
- (d) The motivations for (c) would be (i) to “enhance the capability of the system” and (ii) “stimulate patients to comply with health management program thereby allowing physicians to determine the best way of treatment for the patients more accurately”

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. MPEP 706.02(j). In re Fine, 5 USPQ2d 1596 (Fed.

Cir. 1988); In re Jones, 21 USPQ2d 1941 (Fed. Cir. 1992). In view of the above, the Examiner must show that the prior art of record provides the motivations. MPEP 2143. Further, the Examiner must show that the asserted subject matter includes a teaching, suggestion, or motivation to make the proposed combination or modification of the asserted teachings of the prior art to produce the specific features of the claimed invention.

Applicants have carefully reviewed the Office Action issued in the present application, as well as the Reber, Andrews, and Brown references cited by the Examiner, without finding a motivation anywhere in the record that suggests the desirability of combining or modifying the cited references in the manner proposed by the Examiner.

1.3.1. Reber and Andrews Are Not Analogous Art

Applicants respectfully submit that the Reber and Andrews references are not analogous art. It is a described object of the Andrews system to provide for the security of an electronic device by signaling that a security violation has occurred when a remote unit is not within a selected proximity of the electronic device. Column 1, lines 40-47. In contrast, Reber is directed to communication systems and methods for aiding compliance of an individual with a prescription, including the use of a medical communication apparatus and one or more medicine containers. See, e.g., Column 1, lines 34-61; Column 2, line 38 to Column 3, line 8. There is nothing in either Andrews or Reber, in the knowledge generally available to one having ordinary skill in the art, or in the problem to be solved, that would suggest the selection of Andrews to modify the medical communication system of Reber in the manner proposed by the Examiner.

1.3.2. The Asserted Motivations Are Not Shown in the Cited References

The Examiner's asserted motivations to modify Reber in light of Andrews to (i) "enhance security" or (ii) "increase accuracy of determining compliance of the patients with the prescribed schedule of taking medicine" are not supported by the references. Andrews describes a method and system for providing security for an electronic device which signal that a security violation has occurred when a remote unit is not within a selected proximity of an electronic device. Column 1, lines 40-47. In fact, Andrews is concerned primarily with securing against the theft of devices such as portable computers, and is devoid of a hint or suggestion of medicine containers, the theft of medicine containers, or the "security" of medicine containers or systems involving medicine containers. See, e.g., Column 1, lines 5-64. Reber is also devoid of any suggestion of how the proximity of two medicine containers is related to "security" or "a security violation." Thus, neither Andrews nor Reber suggests either (i) the desirability of enhancing the security of containers for storing medicine generally, or (ii) the desirability of determining whether two containers for storing medicine are positioned "within a selected proximity" of one another specifically.

In contrast, according to some embodiments of the present invention, an entity (e.g., an insurance company) may track a party's compliance to a medicine schedule merely by monitoring whether the medicine containers are being kept together. See, e.g., Specification, page 9, lines 20-23. Some embodiments of the present invention provide the benefit that two containers positioned so as to communicate with one another may communicate various types of information to one another. See, e.g., Specification, page 9, lines 5-20. Applicants respectfully

submit that there is nothing in increasing and/or monitoring compliance with a medicine schedule that would suggest to one having ordinary skill the proposed modification of Reber in light of the method for “providing security” described in Andrews.

Applicants also respectfully submit that there is nothing presented by the Examiner, or identifiable in the record, to support the Examiner’s conclusory statements that it would have been obvious to modify Reber in light of the Andrews and / or Brown systems in order to (i) “increase accuracy of determining compliance”; (ii) “enhance the capability of the system”; or (iii) “stimulate patients to comply with health management program” in the manner asserted by the Examiner. The Examiner does not indicate any evidence of record that would suggest to one of ordinary skill that determining the proximity of two devices is at all relevant to determining compliance with a “health management program,” much less that determining whether two medicine containers are able to communicate (or rewarding based on such a determination) would “increase accuracy of determining compliance,” “enhance the capability,” or “stimulate patients to comply” in the Reber system, as proposed by the Examiner.

The Examiner’s asserted motivations are thus mere conclusory statements that the Examiner’s proposed combinations of Reber, Andrews and/or Brown would be advantageous. The Examiner does not provide a reasoned explanation, based on evidence in the record, as to how one having ordinary skill in the art would have been led to provide for the specific features of any of independent Claims 3, 26, and 28. Applicants respectfully submit that the Examiner’s proposed modifications of Reber in light of Andrews and/or Brown use impermissible hindsight reconstruction absent some real and specific teaching, suggestion, or motivation for the modifications.

Applicants respectfully submit that there is no suggestion in the prior art of record to combine the particular asserted teachings of the prior art to provide for all of the features of independent Claim 3, 26, and 28. Accordingly, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness of independent Claim 3, 26, and 28.

For at least the reasons stated herein, Applicants respectfully request allowance of the pending Claims 3, 26, and 28, and Claims 4-14, 27, and 29 dependent respectively therefrom.

2. Claims 4 – 6

Claim 4 is dependent from independent Claim 3, and is considered to be allowable for at least the reasons stated herein with respect to independent Claims 3 and 28. For example, Applicants respectfully submit that the references do not teach or suggest *a device that monitors whether a first container for storing a first medicine was positioned so as to communicate with a second container for storing a second medicine*, as recited in Claim 4. Accordingly, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness with respect to Claim 4. Claims 5 and 6 depend from Claim 4 and are believed to contain allowable subject matter for at least the reasons stated herein with respect to Claim 4.

In addition, Claim 5 recites a feature generally directed to *wherein the device that monitors comprises at least one of the first container and the second container*. Applicants

respectfully submit that the cited references do not teach or suggest such a feature; the Examiner does not assert otherwise.

With respect to Claim 6, the Examiner asserts that Reber describes a feature generally directed *polling a device that monitors whether a first container for storing a first medicine was positioned so as to communicate with a second container for storing a second medicine*. (Office Action, page 7.) Applicants respectfully traverse this assertion. Even if the prior art of record suggests such a device, which Applicants dispute as discussed above with respect to independent Claim 3, Applicants have carefully reviewed Reber, including the cited passages, and cannot identify any support for the Examiner's assertion that Reber describes *polling such a device*.

3. Claims 7-10

The Examiner asserts that Reber teaches a feature directed to *determining whether a first container for storing a first medicine was positioned so as to wirelessly communicate with a second container for storing a second medicine: (i) based at least in part on a signal received from at least one of a representative of a pharmacy, a representative of a medical facility and a party that is to take at least one of the first and the second medicines*, as provided for in Claim 7; and (ii) *based at least in part on a code*, as provided for in Claim 8. (Office Action, page 7.) Applicants respectfully traverse these assertions. Even if the prior art of record suggests making such a determination generally, which Applicants dispute as discussed above with respect to independent Claim 3, Applicants have carefully reviewed Reber, including the cited passages, and cannot identify any support for the Examiner's assertion that Reber describes *making such a determination based at least in part on a signal received from any of the entities* recited in Claim 7, or *based at least in part on a code*, as provided for in Claim 8. Claims 9-10 depend from Claim 8 and are believed to be allowable for at least the reasons stated with respect to Claim 8.

4. Claim 11

It is Applicants' understanding that the Examiner's rejection of Claim 11 is based on the Examiner's assertion that Reber teaches "information regarding whether at least two medicine containers were able to communicate during a pre-determined period." (Office Action, pages 4, 6.) Applicants respectfully traverse this assertion. Applicants have carefully reviewed Reber, including the cited passages, and cannot identify any support for the Examiner's assertion. Specifically, there is no suggestion of communication between two containers for storing medicine within a predetermined time period (or of the desirability of such communication), much less *determining whether a first container for storing a first medicine was positioned so as to wirelessly communicate with a second container for storing a second medicine during a pre-determined time period*, as generally provided for in Claim 11. Applicants respectfully submit that Claim 11 contains allowable subject matter. If Applicants have misunderstood the Examiner's rejection of Claim 11, Applicants respectfully request that the Examiner clarify the reasoning for the rejection of Claim 11.

Newly-Added Claims 34-51 Are Patentable Over the Cited References

Newly-added Claims **34-51** are patentable over Reber, Andrews, Daansen, and Brown for at least the reasons presented herein.

As discussed above with respect to independent Claims **3, 26, and 28**, neither Reber, Andrews, nor Brown, alone or in combination, teaches or suggests *a first container for storing a first medicine able to communicate with a second container for storing a second medicine*. Applicants respectfully submit that the cited references cannot teach or suggest *receiving information regarding whether a first container for storing a first medicine was able to communicate with a second container for storing medicine during a pre-determined time period*, much less *a device that monitors whether two containers are able to communicate*.

Further, as discussed above with respect to Claims **3, 26, and 28**, the cited references are devoid of a hint or suggestion of how the ability of two medicine containers to communicate is at all relevant to a party's compliance with a medicine schedule. The Examiner, however, asserts with respect to now-cancelled Claims 1-2, 18-19, 22, 30, and 32-33 that Reber teaches *determining a level to which the party complied with a medicine schedule based on information regarding whether at least two medicine containers were able to communicate during a pre-determined time period*. (Office Action, page 4.) Applicants respectfully traverse this assertion; as the cited references do not teach or suggest such information, or the desirability of such information, Reber cannot teach or suggest determining a party's compliance based on such information. Even if the references did teach or suggest such information, which Applicants dispute, there is nothing in any of the cited references that suggests determining a level of compliance based on such information. Reber, for example, only describes compliance based on whether a patient indicates that he took a medicine within a time duration. See Column 8, lines 55-62; Column 10, line 5-57. Accordingly, Applicants respectfully submit that the cited references do not teach or suggest *determining a level to which a party complied with a medicine schedule based on whether at least two medicine containers were able to communicate during a pre-determined time period*, much less *rewarding a party based on such a level*.

The cited references also do not teach or suggest any of the following features:

- (a) *receiving information regarding whether at least one first container for storing a first medicine was able to communicate with at least one second container for storing a second medicine during a pre-determined time period*
- (b) *determining a level to which the party complied with a medicine schedule based on the information*
- (c) *rewarding the party based on the level*

as generally recited in new independent Claims **34 and 36**;

- (a) *means for obtaining information that identifies whether at least one first container for storing a first medicine was able to communicate with at least one second container for storing a second medicine during a pre-determined time period*
- (b) *means for rewarding a party based on the information*

as recited in new independent Claim 38

- (a) *receiving a signal from a device that monitors whether a first container for storing a first medicine was positioned so as to communicate with a second container for storing a second medicine*
- (b) *determining if at least one party has complied with a schedule for taking the first medicine and the second medicine based at least in part on the received signal*

as recited in new independent Claim 39; and

- (a) *a step for obtaining information that identifies whether at least one first container for storing a first medicine was able to communicate with at least one second container for storing a second medicine during a pre-determined time period*
- (b) *a step for rewarding a party based on the information*

as recited in new independent Claim 51.

New Claims 35, 37, and 40-48 are dependent from one of new independent Claims 34, 36, and 39, and are deemed allowable for at least the reasons stated herein with respect to those independent claims.

With respect to now-cancelled Claim 23, the Examiner asserts that it would have been obvious “to modify Reber et al. and Brown to include that a first reward based on a distance between the first container and the second container...because it would stimulate and discipline patients to comply with health management program thereby allowing physicians to determine the best way of treatment for the patients more accurately.” (Office Action, page 6.) Applicants respectfully traverse this assertion. This is a conclusory statement without support in the record. Specifically, the Examiner does not even indicate a reference that teaches or suggests *a reward based on a distance between the first container and the second container*, or the desirability of such a feature. Thus, the asserted combination would not provide for all the features of Claim 23. Applicants respectfully submit that the references do not teach or suggest such a feature, and respectfully traverse any implied assertion that the cited references suggest all types of rewards based on any type of information. Accordingly, Applicants respectfully submit that the cited references do not teach or suggest *providing the at least one party with a first reward based on a distance between the first container and the second container*, as recited in new Claim 48.

With respect to now-cancelled Claims 24-25, Applicants respectfully traverse the Examiner’s assertion that it would have been obvious to modify Reuber in light of Daansen to provide for all of the features of Claims 24-25. As the Examiner states, Daansen describes “wherein employers may be fined if employees do not comply with Food Code regulations” for employee hand washing. (Office Action, page 9). The Examiner’s asserted motivation is a conclusory statement that the Examiner’s proposed combinations of Reber and Daansen would be advantageous. The Examiner, however, does not provide a reasoned explanation, based on evidence in the record, as to how one having ordinary skill in the art would have been led to provide for the specific features of any of now-cancelled Claims 24-25. For example, the Examiner does not provide a reasoned explanation as to how the knowledge that employers may be fined if employees do not comply with Food Code regulations for hand washing would have led one of ordinary skill to modify the Reber system to provide for penalizing a party for failure

to comply with a medicine schedule, much less for *charging the at least one party for at least a portion of a treatment of an illness*. For example, Daansen is devoid of a hint or suggestion of a medicine schedule, and both Reber and Daansen are devoid of a suggestion of the desirability of penalizing a party for failure to comply with a medicine schedule. There is nothing in either Reber or Daansen that suggests the applicability of Food Code regulations regarding hand washing to taking a prescription medicine, much less the desirability of making an employer liable for an employee's (or any other party's) failure to comply with a medicine schedule. Further, there is nothing in either Reber or Daansen that suggests *charging the at least one party for at least a portion of a treatment of an illness*. Applicants respectfully submit that the Examiner's proposed modifications of Reber in light of Daansen uses impermissible hindsight reconstruction absent some real and specific teaching, suggestion, or motivation for the modifications. Applicants respectfully submit that the cited references do not teach or suggest any of the following:

- (a) *penalizing the at least one party if the at least one party has not complied with the schedule for taking the first medicine and the second medicine*

as recited in new Claim 49; and

- (a) *charging the at least one party for at least a portion of a treatment of an illness, in which the illness results at least in part from the at least one party not complying with the schedule for taking the first medicine and the second medicine*

as recited in new Claim 50.

For at least the reasons stated herein, Applicants respectfully submit that new Claims 34-51 are allowable.

Conclusion

It is submitted that all of the claims are in condition for allowance. The Examiner's early re-examination and reconsideration are respectfully requested.

Please charge any fees that may be required for this Amendment to Deposit Account No. 50-0271. Furthermore, should an extension of time be required, please grant any extension of time which may be required to make this Amendment timely, and please charge any fee for such an extension to Deposit Account No. 50-0271.

If the Examiner has any questions regarding this amendment or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at mdowns@walkerdigital.com.


Petition for Extension of Time to Respond

Applicants hereby petition for a TWO-month extension of time with which to respond to the Office Action. Please charge \$205.00 for this petition to our Deposit Account No. 50-0271. Please charge any additional fees that may be required for this Response, or credit any overpayment to Deposit Account No. 50-0271.

If an additional extension of time is required, please grant a petition for that extension of time which is required to make this Response timely, and please charge any fee for such extension to Deposit Account No. 50-0271.

Respectfully submitted,

May 5, 2003
Date


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